Supreme Court, U. S.
FILED
JUL 30 1976
MICHAEL RODAK, JR., CLERK

76-138

IN THE

# Supreme Court of the United States

October Term, 1976

---

NELLIE T. GOFF, Petitioner

v.

CASPAR WEINBERGER, Secretary of Health Education and Welfare, Respondent

---

Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

---

EDWARD T. DODD, JR.
JEREMIAH M. KEEFE
Counsel for Petitioner
21 State Street
P. O. Box 2156
Waterbury, Ct. 06702

Of Counsel:

Zipoli, Keefe & Dodd
21 State Street
P. O. Box 2156
Waterbury, Ct. 06702

## TABLE OF CONTENTS


| | Page |
|---|---|
| Opinion below | 1 |
| Jurisdiction | 1 |
| Questions presented for review | 1 |
| Statutes and regulations involved | 1 |
| Statement | 2 |
| Reasons for granting the Writ | 5 |
| a. The Court has decided a federal question which conflicts with another Court of Appeals. | 5 |
| b. The Court of Appeals has decided an important question of federal law which has not been, but should be, decided by this Court | 7 |
| Conclusion | 8 |

## AUTHORITIES CITED


| | Page |
|---|---|
| **Cases:** | |
| Dvorak v. Celebrezze, 345 Fed 2d 894 (10 Cir. 1965) . | 7 |
| Haberman v. Finch, 418 Fed 2d 664 (2 Cir. 1969) .... | 7 |
| Roy v. Gardner, 387 Fed 2d 162 (4 Cir. 1967) ..... | 6 |
| Rasmussen v. Gardner, 374 Fed 2d 589 (Cir. 1967) .. | 7 |
| Tuck v. Finch, 430 Fed 2d 175 (4 Cir. 1970) ..... | 5, 6 |
| **Statutes:** | **Appendix** |
| 5 USC 556 (c) (8) ..... | 1g |
| 42 USC 402 (d) ..... | 2g |
| 42 USC 402 (g) ..... | 3g |
| 42 USC 402 (i) ..... | 3g |
| 42 USC 405 (a) ..... | 14g |
| 42 USC 405 (c) (5) (a) ..... | 15g |
| 42 USC 405 (g) ..... | 15g |
| **Regulations:** | |
| 20 CFR 404.601 (b) ..... | 16g |
| 20 CFR 404.601 (c) ..... | 17g |
| 20 CFR 404.601 (d) ..... | 18g |
| 20 CFR 404.601 (e) ..... | 19g |
| 20 CFR 404.613 ..... | 20g |




## OPINION BELOW

United States Court of Appeals below without opinion affirmed the judgment (appendix pg. 1a) of the District Court (appendix pg. 1b), both decisions are not reported.

## JURISDICTION

The judgment of the Court below (appendix pg. 1a) was entered on May 4, 1976. Rehearing was not sought. The jurisdiction of the Court is envoked under 28 U.S.C. Sect. 1254 (1).

## QUESTIONS PRESENTED FOR REVIEW

1. Whether the sworn affidavit of the Petitioner's attorney and the Petitioner's testimony are substantial evidence that the Petitioner was entitled to survivor's insurance benefits under the Social Security Act retroactive to March 31, 1959.

2. Whether the oral inquiry by the Petitioner's attorney on the Petitioner's behalf in 1959 concerning entitlement to survivor's insurance benefits constituted an intent to claim survivor's insurance benefits under the Social Security Act.

3. Did the court below err in not holding that the requirement of a written statement of intent to claim survivor's insurance benefits under the Social Security Act had been validly waived by the Administrative Law Judge.

## STATUTES AND REGULATIONS INVOLVED

The Statutes involved are: 5 U.S.C. 556 (c) (8); 42 U.S.C. 402 (d); 42 U.S.C. 402 (g); 42 U.S.C. 402 (i); 42 U.S.C. 405 (a); 42 U.S.C. 405 (c) (5) (a) 42 U.S.C. 405 (g). Because these provisions are lengthy, their pertinent text is set forth in appendix pg. 1g - 15g.

The Regulations involved are Social Security Regulations: 20 C.F.R. 404.601 (b); 20 C.F.R. 404.601 (c); 20 C.F.R. 404.601

(d) 20 C.F.R. 404.601 (e); 20 C.F.R. 404.613. Because these provisions are lengthy, their pertinent text is set forth in appendix pg. 20g.

## STATEMENT

This is an action under Section 205 (g) of the Social Security Act, as amended 42 U.S.C. 405 (g) to review a final decision of the Secretary of Health, Education and Welfare denying surviving child's insurance benefits to James Woolley, Patricia Woolley and Jane (Woolley) Turgeon retroactive to March 1959 and mother's insurance benefits to Nellie Goff, retroactive to March 1959.

On January 28, 1971, Mrs. Goff filed a written application for surviving child's insurance benefits and benefits were awarded to James Woolley and Patricia Wooley on April 14, 1971, retroactive to January, 1970. A timely request for reconsideration and application of child's insurance benefits was made for James Woolley and Patricia Woolley from March 1959, child's insurance benefits for Jane (Woolley) Turgeon from March 1959 to May 1969, and mother's insurance benefits for herself from March 1959 to November 1962. On May 9, 1973, Bernard Levine, chief of the reconsideration branch, affirmed the initial determination.

Mrs. Goff appealed the reconsideration determination to the Bureau of Hearings, and a hearing was held on December 19, 1973. On March 11, 1974 the Administrative Law Judge awarded child's insurance benefits to James and Patricia Woolley effective as of March 31, 1959, child's insurance benefits to Jane (Woolley) Turgeon from March 31, 1959 to May, 1969, and mother's insurance benefits to Mrs. Goff from March 31, 1959 to November 1962.

On April 2, 1974, the Appeals Council, on its own Motion, decided to review the Administrative Law Judge's decision. On July 22, 1974, the Appeals Council overruled the decision of the Administrative Law Judge and awarded child's



insurance benefits to James and Patricia Woolley retroactive to January, 1970. On September 11, 1974, Mrs. Goff appealed this decision to the United States District Court for the District of Connecticut. On October 6, 1975, the Court heard argument on Cross-Motions for Summary Judgment and in its ruling date October 17, 1975, the Court granted the Defendant's Motion for Summary Judgment. Judgment was entered accordingly on November 28, 1975.

The Plaintiff's husband, Clayton Woolley, died suddenly in a tragic accident on March 31, 1959. Besides his widow, Nellie T. Goff, he left three children, namely: James Woolley, born February 3, 1953, Patricia Woolley, born October 19, 1955 and Jane (Woolley) Turgeon, born June 1, 1949, married during May 1969. As the wage earner for the family, Clayton Woolley was fully insured under the Social Security Act at the time of his death.

Mrs. Goff sought the advice of her attorney, Bernard Grabowski, relative to eligibility for Social Security Benefits for her and her children. The attorney, and later United States Representative, advised her that neither she nor her children were eligible for Social Security Benefits. He had inquired via telephone to the Social Security Office in New Britain, Connecticut and was advised that since she and her children were receiving Workmen's Compensation Benefits, neither she nor her children were entitled to Social Security Benefits.

Mrs. Goff made no further inquires relative to Social Security Benefits until 1970. Mrs. Goff was told again by her attorney, then former United States Congressman, that she and her children were not eligible for benefits. In 1971, after hearing a public information announcement on the radio, on her own, she learned that she and her children were, in fact, entitled to Social Security Benefits and should have been receiving benefits from March 1959. On January 28, 1971, the Plaintiff filed a written application for surviving child's insurance benefits. Pursuant to that application, benefits were awarded to James Woolley and Patricia Woolley on

April 14, 1971, retroactive to January 1970. Later, for good cause shown, the two year limit for lump sum death benefits was waived and payment was made.

A timely request for reconsideration and an application for child's insurance benefits was made for James Woolley and Patricia Woolley from March 1959, child's insurance benefits for Jane (Woolley) Turgeon from March 1959 to May 1969, and mother's insurance benefits for herself from March 1959 to November 1962, at which time Nellie Goff married her present husband. On May 9, 1973, Bernard Levine, Chief of the Reconsideration Branch, affirmed the initial determination and allowed child's insurance for James and Patricia Wolley retroactive to January 1970, but denied child's insurance benefits to Jane (Woolley) Turgeon and mother's insurance benefits to the Plaintiff.

The Plaintiff appealed the reconsideration determination to the Bureau of Hearings and requested a hearing before an Administrative Law Judge. The hearing was held on December 19, 1973. Attorney Grabowski informed Judge Bennett in a letter addressed to him dated January 3, 1974, that he did, in fact, contact the Social Security Office in New Britian, Connecticut to inquire as to the eligibility of the Plaintiff and her children for Social Security Benefits. On March 11, 1974, the Administrative Law Judge filed his decision giving benefits. He awarded child's insurance benefits to James and Patricia Woolley effective as of March 31, 1959 and child's insurance benefits to Jane (Woolley) Turgeon from March 31, 1959 to May 1969, and mother's insurance benefits were allowed to the Plaintiff from March 31, 1959 to November 1962.

The Appeals Council, on its own Motion, on April 2, 1974, notified the Plaintiff of its decision to review the Administrative Law Judge's decision. On July 22, 1974, after a hearing had been held, the Appeals Council overruled the decision of the Administrative Law Judge and awarded child's insurance benefits to only James and Patricia



Woolley retroactive to January 1970. From that decision the Plaintiff appealed to the United States District Court for the District of Connecticut on September 11, 1974. On October 6, 1975, argument was heard on Cross-Motions for Summary Judgment, and in its ruling dated October 17, 1975, the Court granted the Defendant's Motion for Summary Judgment, and Judgment was entered accordingly on November 28, 1975.

On December 30, 1975 the Petitioner filed a timely Notice of Appeal from the judgment with the United States Court of Appeals for the Second Circuit. On May 4, 1976, oral arguments were made by both parties before the United States Court of Appeals for the Second Circuit. On May 4, 1976, United States Court of Appeals for the Second Circuit affirmed the judgment of the United States District Court.

## REASON FOR GRANTING THE WRIT

### A

The Court of Appeals has decided a federal question which conflicts with another Court of Appeals.

The instant decision holds that failure to satisfy the technicality of a written application prevents a claimant from securing Social Security benefits. This is in conflict with the decision in Tuck v. Finch, 430 Fed. 2d 175 (4 Cir., 1970). The instant claim is not based merely on the self-serving statement of the Petitioner alone, but is fully corroborated and substantiated by the letter and affidavit of Attorney Grabowski. The corroboration along with the circumstances, bring the present case within the holding of Tuck.

In **Tuck** the Court found that the use of a written application form is not mandatory and its absence does not conclusively establish that an application was not made. Although the case involved an application for disability

under 205 (c) (5) (A), 42 USC 405(c) (5) (A) rather than entitlement under Sections 202(d) and 202(g) of the Act, 42 USC 402(d), 402 (g), the principles of construction in **Tuck** are applicable in the present case. The question in Tuck was whether an unwritten, informal application satisfied the Statute. The court held that the oral request for benefits was an application for monthly benefits. The court said on page 1077 as follows:

> "The Secretary has prescribed application forms for disability insurance benefits. 20 C.F.R. 422.501 and .505. Ordinarily an application made on the form will conclusively establish the date it was filed. Use of a form, however, does not appear to be mandatory, and its absence does not conclusively establish that an application was made, especially when the Applicant is illiterate. Here the Secretary's own records affirmatively show that in February 1965, Tuck "asked about receiving Social Security Benefits" and that an official of the Social Security Administration discussed his application with him. While a written application might be expected from a literate person, an illiterate often can do little other than make an oral request to the official to whom he has been referred."

The Court in **Tuck** was considerng the case of **Roy v. Gardner**, 387 F. 2d 162, wherein there had been a finding that a claim for disability benefits had not been filed. In the **Roy** case the Court pointed out that there was unsubstantiated testimony of the Claimant. The court stated:

> "The fact that no such claim was to be found in the records of the Social Security Administration and that there was no notation of the receipt or filing of any such claim, if not conclusive, furnish substantial evidence in support of the finding. The fact finder was not bound to accept the self-serving testimony of the Claimant and his wife, otherwise unsubstantiated, to the contrary."



**The Court in Tuck distinguished the Roy case by stating that in Tuck the Secretary' records corroborated Tuck's claim. Therefore, corroboration of the Claimant's oral inquiry in Tuck was the rationale for the Court holding. In Tuck the corroboration was accidentally a written record of the Claimant's oral inquiry made by a Social Security employee. In the present case, the Claimant's oral inquiry is meaningfully corroborated by Attorney Grabowski. By correspondence and by signed Affidavit, he vividly attests to the fact that he did make an oral inquiry at the New Britian, Connecticut Social Security Office on behalf of the Claimant.**

**B.**

**The Court of Appeals has decided an important question of federal law which has not been, but should be settled by this Court.**

**The instant decision has far reaching consequences which will affect a substantial number of persons in the future. The decision of the Court of Appeals involves the very essence of the broad purpose of the Social Security Act. It clearly appears that the broad purpose of the Social Security Act requires a liberal interpretation of its provisions. To achieve the social objectives and goals of the Social Security Act, the Court should not be technical or restrictive. The provisions should be liberally applied in favor of coverage. Rasmussen v. Gardner, 374 Fed 2d 589 (10 Cir. 1967); Dvorak v. Celebrezze, 345 Fed 2d 894 (10 Cir, 1965); Haberman v. Finch, 418 Fed 2nd 664 (2 Cir. 1969).**

**This decision is a significant departure from the aforementioned principles and philosophy. If permitted to stand, it may have a serious financial impact on present and future Social Security claimants.**

**It is appropriate and necessary that this Court review the case at bar so that the uncertainty of the interpretation and application of the Social Security Act may be resolved.**

Additionally, this decision involves important public policy considerations which have not been, but should be decided and enunciated by this Court.

## CONCLUSION

It is respectfully submitted that the Petition for a Writ of Certiorari should be granted.

RESPECTFULLY SUBMITTED,

---

EDWARD T. DODD, JR.
JEREMIAH M. KEEFE
Attorneys for Petitioner
21 State Street
P. O. Box 2156
Waterbury, Connecticut 06702

Supreme Court, U. S.
FILED
JUL 30 1976
MICHAEL RODAK, JR., CLERK

76-138

IN THE

# Supreme Court of the United States

October Term, 1976

---

NELLIE T. GOFF, Petitioner

v.

CASPAR WEINBERGER, Secretary of Health Education and Welfare, Respondent

---

## APPENDIX

---

EDWARD T. DODD, JR.
JEREMIAH M. KEEFE
Counsel for Petitioner
21 State Street
P. O. Box 2156
Waterbury, Ct. 06702

Of Counsel:

Zipoli, Keefe & Dodd
21 State Street
P. O. Box 2156
Waterbury, Ct. 06702

## TABLE OF CONTENTS

Appendix .....

a. Judgment of the United States Court of Appeals
b. Memorandum of Decision of the United District Court on Cross Motions for Summary Judgment
c. Decision of Appeals Council, Social Security Administration, Bureau of Hearings and Appeals
d. Hearing decision of Administrative Law Judge, Social Security Administration, Bureau of Hearings and Appeals
e. Letter of Attorney Grabowski dated January 3, 1974
f. Affidavit of Attorney Grabowski dated April 10, 1974
g. Statutes and Regulations involved .....

**APPENDIX A**

**UNITED STATES COURT OF APPEALS**

**For The**

**SECOND CIRCUIT**

---

At a stated Term of the United States Court of Appeals for the Second Circuit held at the United States Courthouse in the City of New York, on the Fourth day of May one thousand nine hundred and Seventy-Six

Present:

HON. WILLIAM H. MULLIGAN
HON. THOMAS J. MESKILL
Circuit Judges
HON. EDMUND L. PALMIERI
District Judge

NELLIE T. GOFF,

76-6004

Plaintiff - Appellant

v.

CASPAR WEINBERGER, Secretary of Health, Education and Welfare,

Defendants - Appellees.

Appeal from the United States District Court for the District of Connecticut.

This cause came on to be heard on the transcript of record from the United States District Court for the District of Connecticut, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed judgment with costs to be taxed against the appellant.

A. DANIEL FUSARO
Clerk

by VINCENT A. CARLIN
Chief Deputy Clerk

## APPENDIX B

## MEMORANDUM OF DECISION OF THE UNITED DISTRICT COURT ON CROSS MOTIONS FOR SUMMARY JUDGMENT

## RULING OF CROSS-MOTIONS FOR SUMMARY JUDGMENT

This action was brought pursuant to § 205(g) of the Social Security Act, as amended, 42 U.S.C. § 405(g), requesting judicial review of a final decision of the Secretary of Health, Education and Welfare. The Appeals Council reversed the Administrative Law Judge's decision, which had allowed dependents' insurance benefits to the plaintiff and her children retroactive to March 31, 1959. The case comes before the Court on cross-motions for summary judgment pursuant to Rule 56, Fed. R. Civ P. No remaining factual issues exist to be resolved and the case can now be decided as a matter of law. The legal issue presented is whether or not the record contains substantial evidence to support the Secretary's denial action of survivor's insurance benefits for any month prior to January, 1970; and whether or not any valid application was filed with the Social Security Administration prior to January, 1971. The Court finds that the Secretary's findings are supported by substantial evidence and his decision is therefore affirmed.

### FACTS

At the time of Clayton E. Woolley's death, he was married to the plaintiff, Nellie T. Goff. He died on March 31, 1959 from injuries suffered during the course of his employment by the State of Connecticut and was covered at the time by Workmen's Compensation. At that time the couple had three living children, a stepchild, Jane (Woolley) Turgeon, born June 1, 1949, married during May 1969; James Woolley, born February 3, 1953, and Patricia Woolley, born October 19, 1955.

The plaintiff concedes that no written application for Social Security benefits was formally filed in writing in behalf of the children until January 28, 1971. The defendant awarded payments for one year retroactively back to January, 1970, to two minor children, James and Patricia, both of whom were under 18 years of age.

The plaintiff thereafter married her present husband, Joseph P. Goff, in 1962. She complains that she and the children should have been qualified to receive benefits commencing on March 31, 1959. Immediately after the death of her husband on March 31, 1959, she applied under Connecticut State Law § 5-144, for Workmen's Compensation and received an award for herself and said children. For that purpose she was represented by retained counsel and consulted him on the question of whether or not she and the children were entitled to receive Social Security Benefits. The attorney stated in an attached affidavit, that he had telephoned the New Britain Social Security Office sometime during July, 1959, to inquire as to the family's eligibility and was informed by a Social Security employee, that since she and the children were already receiving benefits under the State Workmen's Compensation Act, they did not qualify for Social Security insurance benefits.

She now claims that since she was dissuaded from filing in 1959, through the alleged false advice given by an employee of the agency to her attorney, the latter's oral inquiry should be considered tantamount to a written statement of intent to file an application for benefits, as required by § 404.613 of Regulation No. 4. In fact, the Administrative Law Judge here made his finding that the oral telephone inquiry made by the plaintiff's attorney, of which no record could be found, constituted a lawful statement of intent, within the meaning of the Social Security regulations and justified a finding that the claim of the mother and children was valid and effective on March 31, 1959.



## DISCUSSION OF LAW

Title 42 U.S.C. § 405(a) vests in the Secretary the right to make and promulgate procedural regulations to administer the Act. 1/Under these regulations, 20 C.F.R. § 404.601(d) provides:

> ". . . an individual has not 'filed an application' for purposes of sections 202, 216(i), or 223 of the Act . . . until an application on a form prescribed in § 404.602 has been filed in accordance with the regulations in this subpart."

20 C.F.R. § 404.601(e) provides:

> "The term "to execute an application' (or a written statement, request, or notice . . .) means the completion and signing of the application (or written statement, request, or notice) . . ."

In furtherance of the foregoing policy, § 404.613 of these regulations provides, that if an individual files a written statement with the Social Security Administration, which indicates an intention to claim benefits and such statement bears his signature, the filing of such statement shall be considered to be the filing of an application for such benefits. Thus the administrative purpose of the Act and its supporting regulations were specifically designed to assure, that only a written expression of intent to claim Social Security benefits should be accepted and considered as a valid application under the law. This case is clearly distinguishable from the case of **Tuck v. Finch**, 430 F. 2d 1075 (4th Cir. 1970), cited by the plaintiff, and the plaintiff concedes that no written record exists in the Social Security office to confirm that an application, written or oral, was ever filed.

The Social Security Act, supplemented by its regulations, was intended to eliminate or at least reduce to a minimum the possibility of fraud, confusion, and laxity in its

administration. The vastness of the program makes it essential to adhere to the written application procedure, if there is to be an orderly and controllable system of management for approving claims and paying out insurance benefits.

The plaintiff claims that the defendant is estopped from denying relief, because the agency's own employee dissuaded her from filing a written application. Furthermore, she claims that since the Administrative Law Judge, its own agency employee, found in her favor, the Government has thereby waived any procedural non-compliance by her in failing to file the required written application.

The Government cannot be estopped in this manner from insisting upon the performance of statutory conditions precedent, by the unauthorized acts of a local Social Security office employee.

> "But even assuming that he did receive 'misinformation' on which . . . acted to her detriment, it is plain that estoppel will not lie against the Government under these circumstances. Parties dealing with the Government are charged with knowledge of and are bound by statutes and lawfully promulgated regulations despite reliance to their pecuniary detriment upon incorrect information received from Government agents or employees. Failure to comply with the applicable statute and regulations precludes recovery against the Government 'no matter with what good reason' the claimant believed she had come within the requirements. Estoppel will not lie regardless of the financial hardship 'resulting from innocent ignorance.' **Federal Crop Insurance Corp v. Merrill,** 332 U.S. 380, 68 S.Ct. 1, 92 L.Ed. 10; **Walker-Hill Co. v. United States,** 162 F.2d 259 (7 CIR. 1947), cert. den. 332 U.S. 771, 68 S.Ct. 85, 92 L.Ed. 356; **James v. United States,** 185 F.2d 115, 22 A.L.R. 2d 830 (4 Cir. 1950)." **Flamm v. Ribicoff,** 203 F.Supp. 507, 510 (S.D.N.Y. 1961).



**Also see, McIndoe v. United States,** 194 F.2d 602, 603 (9th Cir. 1952); and **Taylor v. Flemming,** 185 F.Supp. 280, 284 (W.D. Arkansas 1960).

While the Administrative Law Judge found that the telephone inquiry made by the plaintiff's attorney constituted a statement of intent on the part of the plaintiff to file for benefits within the meaning of § 404.613, that conclusion was in fact an interpretation of a rule of law applied to the factual circumstances as the judge found them. To press beyond and claim that his ruling, as an employee of the agency, constituted an actual waiver of the defendant's position, so as to estop it from denying benefits, would destroy the quasi-judicial character of the Administrative Law Judge. It would also unduly curb the Secretary's clear statutory right to an effective review of final rulings, pursuant to 42 U.S.C. § 405(b). This statute provides in part:

> "The Secretary is further authorized, **on his own motion,** to hold such hearings and conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this title." (Emphasis added).

Such a construction would also unduly limit the right to a full judicial review under 42 U.S.C. § 405(g); a result never contemplated by the Congress.

The factual situation found to exist here does not conform to the essential requirements of the Social Security Regulations, 20 C.F.R. §§ 404.602 and 404.613. Failure of the plaintiff to file a timely application under the rules is not simply a non-essential procedural requirement, it is a substantial and basic requirement of the regulations.

> "In examining the regulations promulgated by the Secretary of Health, Education, and Welfare, the Court refers to pertinent provisions of 20 C.F.R. § 404.601 et seq. Under § 404.601, it is required that an individual file an application on a form prescribed by

the Administration. Section 404.607(b) provides for benefits retroactive for one year from the date of filing. Section 404.608 sets out the guideline that a written statement, request, notice or application is deemed 'a filing', but only on the date it is received by the local office. In addition, such a statement must be reduced to the prescribed form within certain periods for it to be effective." **Parker v. Finch**, 327 F. Supp. 193, 195 (N.D. Ga. 1971).

The defendant Secretary is charged with the duty to weigh the evidence, to resolve material complaints in the testimony and to determine the cases accordingly. **Moss v. Gardner**, 411 F. 2d 1195 (4th Cir. 1969) **Staples v. Gardner**, 357 F. 2d 922 (5th Cir. 1966); **Stumbo v. Gardner**, 365 F.2d 275 (6th Cir. 1966); **Rhinehart v. Finch**, 438 F.2d 920 (9th Cir. 1971). The findings of the Secretary are conclusive, if supported by substantial evidence and a proper application of the law.

The Court adopts the findings and decisions of the Appeals Council (Tr. 4-10) as affirmed by the Secretary of Health, Education, and Welfare. The Court finds that the Secretary's determinations were supported by substantial evidence, as required under § 205(g) of the Social Security Act, 42 U.S.C. § 405(g). **Newman v. Celebreeze**, 310 F.2d 780 (2d Cir. 1962); **Dondero v. Celebreeze**, 312 F.2d 677 (2d Cir. 1963).

The defendant's motion for summary judgment is granted. SO ORDERED.

Dated at Hartford, Connecticut, this 17th day of October, 1975.

T. Emmet Clarie
Chief Judge

**FOOTNOTE**

1
42 U.S.S. § 405(a) provides:
"**Rules and regulations.** The Secretary shall have full power and authority to make rules and regulations



and to establish procedures, not inconsistent with the provisions of this title, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder."

## APPENDIX C

## SOCIAL SECURITY ADMINISTRATION

### Bureau of Hearings and Appeals

## DECISION OF APPEALS COUNCIL

In the case of:
Nellie T. Goff for self and o/b/o
Jane W. Turgeon, James and Patricia Woolley
(Claimant)
Clayton Woolley
(Wage Earner)

Claim for:
Mother's Insurance Benefits
Child's Insurance Benefits
048-20-6929
(Social Security Number)

This case is before the Appeals Council on its own motion to review the decision of the administrative law judge issued on March 11, 1974. The Appeals Council notified the claimant and her representative of this action and of her rights with respect thereto.

Mr. Jeremiah M. Keefe, Esquire, the claimant's representative, appeared before the Appeals Council on June 4, 1974 and presented oral argument on behalf of the claimant.

In his decision, the administrative law judge found that an oral inquiry, concerning the payment of benefits to the claimant and her children, made in 1959, by her then representataive, constituted a written statement of intent to file a claim for benefits as required by section 404.613 of Regulations No. 4 of the Social Security Administration and that the claimant and her children were entitled to mother's and child's insurance benefits, respectively, beginning

March 1959.

Evidence in addition to that considered by the administrative law judge has been entered into the record by the Appeals Council as follows:

Exhibit AC-1 Copy of affidavit signed by Bernard F. Grabowski dated April 10, 1974.

## ISSUES

The general issue before the Appeals Council is whether mother's and child's insurance benefits are payable to the claimant for any month prior to January 1970. Specifically at issue is whether an oral inquiry made in 1959 constituted a statement of intent to file an application for benefits as prescribed in section 404.613 of Regulations No. 4.

## LAW AND REGULATIONS

Section 202(d) of the Social Security Act provides, in pertinent part, for the entitlement to child's insurance benefits of a child who, among other requirements, has filed an application for child's insurance benefits and who is not married.

Section 202(g) of the Act provides, as pertinent herein, for the entitlement to mother's insurance benefits of a widow of the wage earner who, among other requirements, has filed an application for mother's insurance benefits and who is not married.

Section 202 (j) (1) of the Act provides that the retroactivity of an application for monthly benefits shall be limited to 12 months prior to the month of filing of the application.

Section 205(a) of the Act provides that:

> "The Secretary shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this title, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder."



Section 404.601(b) of Social Security Administration Regulations No. 4 provides, in pertinent part, that the term "applicant" refers to the individual who has filed an application on his own behalf or on behalf of another for monthly benefits. Section 404.601(c) of the regulations indicates that the term "application" refers only to an application on a form prescribed in section 404.602 and includes an application for monthly benefits. Section 404.601(d) provides that an individual has not "filed an application" for the purposes of section 202 of the Act until an application on a form prescribed in section 404.602 has been filed in accordance with the regulations in Subpart G. Section 404.601(e) of the regulations provides that the term "to execute an application" means the completion and signing of the application (or written statement, request, or notice).

Section 404.608(a) of the regulations provides, in pertinent part, that an application (or written statement, request or notice) is considered to have been filed only as of the date it is received at an office of the Social Security Administration or by an employee of the Administration who has been authorized to receive such application at a place other than such office. Section 404.610 provides that any request for a determination or decision relating to a person's right to monthly benefits shall be in writing.

Section 404.613 of the regulations provides, in pertinent part, that where an individual filed a written statement with the Administration that indicates an intention to claim monthly benefits and said statement bears his signature, the filing of said written statement is considered to be the filing of an application for such purposes, provided a prescribed

application is filed by such individual within 6 months of the date of the date of notice of the requirement therefor.

## EVIDENCE CONSIDERED

The Appeals Council has carefully studied all the testimony at the hearing, the arguments made, and the exhibits of record.

## EVALUATION OF THE EVIDENCE

The claimant filed an application for child's insurance benefits on January 28, 1971. The wage earner died fully insured on March 31, 1959. Benefits were awarded effective January 1970 to James, born on February 3, 1953, and Patricia, born on September 19, 1955. The claimant, who was married to the wage earner at the time of his death, remarried in 1962. The claimant requested reconsideration maintaining that benefits should be payable beginning March 1959 because the claimant had been dissuaded from filing in 1959 by her then representative. Upon reconsideration it was determined that no application had been filed prior to the one dated January 28, 1971 and that benefits could begin no earlier than January 1970.

The record reflects no oral or written inquiry ever having been made prior to the January 1971 application. The claimant's attorney at the time of the wage earner's death, Benjamin Grabowski, alleges that he telephoned the New Britain, Connecticut Social Security Office, and was informed that no benefits were payable because workmen's compensation benefits were being paid to the claimant and her children (Exhibits 20 and AC-1). This conversation allegedly took place in 1959, shortly after the wage earner's death.

As to whether a valid application exists based on the alleged oral inquiry, section 404.613 of Regulations No. 4 clearly requires a **written statement** indicating intent to



claim benefits. Moreover, Social Security Ruling 66-17c, C.B. 1966, p. 39, clearly indicates that an oral inquiry is insufficient to constitute the filing of an application. In this Ruling, an individual inquired orally in February 1956 as to whether she qualified for widow's insurance benefits, and was advised of the deceased worker's lack of insured status and of her ineligibility. She subsequently filed a written application for benefits in May 1962, and submitted evidence which was sufficient to establish additional earnings for the worker, giving him an insured status as of his date of death. It was held that the oral inquiry did not constitute the filing of an application since applications for benefits must be in writing and that the Social Security Administration cannot be stopped from asserting the requirements for entitlement to benefits.

In addition, the great weight of the court decisions support the Social Security Administration's policy, as reflected by the Ruling (supra), with regard to what constitutes an application. The requirement of the regulations that an application must be in writing and that an oral claim cannot constitute an application has been held to be a proper exercise of regulatory authority. **Smaltz v. Ribicoff**, CCF UIR, Fed. para. 14,632 (W.D. No., 9/27/62). Where there is no record of a written request for benefits, the claimant has not established a condition precedent for entitlement. **Graham v. Celebrezze**, CCH UIR, Fed. para 16,146 (W.D. Mo., 12/18/63). The filing of a written statement of intention to claim benefits is a minimum requirement for entitlement to benefits. **Mandelstram v. Celebrezze**, CCH UIR, Fed. para. 14, 733 (E.D. N.Y. 3/16/67). See also, **Emerson v. Celebrezze**, CCH UIR, Fed. para. 14,237 (M.D. Ga., 6/7/65); **Flamn v. Ribicoff**, 203 F. Supp. 507 (1961); **Hilton v. Celebrezze**, CCH UIR, Fed. para. 14,315 (S.D. W. Va., 1/11/66); **Stiel v. Celebrezze**, CCH UIR, Fed. para 16,235 (E.D. Mo., 6/14/64); SSR 63-37C (C.B. 1963, p. 13). Also, it is well established that the government cannot be estopped by the actions of its agents from requiring compliance with statutory conditions of entitlement. See **Caldwell v. Celebrezze**, CCH UIR, Fed.

para. 14, 650 (1962) and **Taylor v. Flemming**, 186 F. Supp. 280 (1960).

The claimant's representative contends that the decision of the U.S. Court of Appeals for the Fourth Circuit in the case of **Tuck v. Finch**, 430 F. 2d 1975 (1970) is applicable to the case at hand. The question in that case was whether Mr. Tuck acquired 4 quarters of coverage in 1961 to meet the insured status requirements for disability purpose. By finding that Mr. Tuck filed an application for benefits in February 1965, when he had inquired orally at a social security office about benefits, the Court was then able to indicate that the Secretary could change his records **of Tuck's self-employment income in 1961 under section 205[c] [5] [A] of the Act** inasmuch as the February 1965 "application" tolled the statute of limitations until a "final" decision was made thereon. Thus, **Tuck** involved a question of the filing of an application for purposes of section 205(c) (5) (A) rather than for purposes of entitlement under sections 202(d) and 223(g) of the Act.

The relevant portion of the Circuit's Court's decision is as follows:

> "The Secretary has prescribed applications forms for disability insurance benefits. 20 CFR sections 422.501 and .505. Ordinarily an application made on this form will conclusively establish the date it was filed. Use of a form, however, does not appear to be mandatory, and its absence does not conclusively establish that no application was made, especially when the applicant is illiterate. Here the Secretary's own records affirmatively show that in February 1965, Tuck asked about receiving Social Security benefits and that an official of the Social Security Administration discussed his application with him. While a written application might be expected from a literate person, an illiterate often can do little other than make an oral request to the official to whom he has been referred.
>
> * * *
>
> We hold, therefore, that Tuck's oral request for benefits and the records of the Secretary establish that in February 1965 Tuck made an application for monthly benefits. Therefore, under section 205(c) (5) (A) of the Act, the Secretary may change his records so they will correctly reflect the number of quarters of coverage to which Tuck is entitled."



It is quite clear that a distinguishing factor in **Tuck** is that the Secretary's records corroborated his claim that he "applied" for disability benefits in February 1965, and that, as an illiterate, an oral inquiry would be the manner in which he would apply for benefits. In the instant case, there is no record of the alleged oral inquiry and neither the claimant not Mr. Grabowski could be considered to be illiterate. It would, therefore, appear because of the dissimilarities in the two cases (**Tuck** and the one at hand), that the court's findings in the **Tuck** case are not applicable to the present proceeding. Moreover, the Social Security Administration has not acquiesced in the **Tuck** decision nor has it effected any policy changes based on that decision.

The administrative law judge was clearly in error in finding that the alleged oral inquiry made by Mr. Grabowski in 1959 was the equivalent of the written statement required by section 404.613 of Regulations No. 4. The only valid application for monthly benefits in this case was filed on January 28, 1971.

## FINDINGS AND CONCLUSIONS OF THE APPEALS COUNCIL

In summary, the Appeals Council makes the following findings and conclusions:

1. The alleged oral inquiry made by Mr. Grabowski does not constitute a written statement of intent to file an application for benefits as required by section 404.613 of Regulations No. 4.

2. Pursuant to section 202 (j) (1) of the Act, the application filed on January 28, 1971 can be retroactive only to January 1970.

3. The claimant, Nellie T. Goff, is not entitled to mother's insurance benefits, having remarried in 1962.

4. Jane W. Turgeon married in May 1969 and is, therefore not entitled to child's insurance benefits based on the application filed on January 28, 1971.

5. James and Patricia Woolley are entitled to child's insurance benefits beginning January 1970 based on the application filed on January 28, 1971.

**DECISION**

The decision of the administrative law judge is reversed. It is the decision of the Appeals Council that Nellie T. Goff is not entitled to mother's insurance benefits; that Jane W. Turgeon is not entitled to child's insurance benefits; and that James and Patricia Woolley are entitled to child's insurance benefits beginning January 1970 and for no prior month.

APPEALS COUNCIL

Joseph E. Doneghy, Member
Norman S. Kerns, Member
Herman Elegant, Member

Date: July 22, 1974



**APPENDIX D**

**HEARING DECISION OF ADMINISTRATIVE LAW JUDGE, SOCIAL SECURITY AD INISTRATION, BUREAU OF HEARINGS AND APPEALS**

**DEPARTMENT OF**

**HEALTH, EDUCATION, AND WELFARE**

**Social Security Administration**

**Bureau of Hearings and Appeals**

HEARING DECISION

In case of
Nellie T. Goff on her own behalf and
o/b/o the children of Clayton Woolley
(Claimant)
Clayton Woolley (Deceased)
(Wage Earner)

Claim for
Mother's Insurance Benefits
Child's Insurance Benefits
048-20-6929
(Social Security Number)

This case being properly before the undersigned Administrative Law Judge was heard in Hartford, Connecticut on December 19, 1973. The claimant appeared personally and testified. She was represented in the hearing by her attorneys, Jeremiah M. Keefe and Leonard P. Coviello. The present husband, James Goff, was also present.

The claimant, on January 28, 1971 filed an application for surviving child's insurance benefits in which she listed as surviving children of Clayton Woolley (who died on March 31,

1959), James Woolley (born February 3, 1953), Patricia Woolley (born October 19, 1955), and Jane (Woolley) Turgeon (born June 1, 1949 and married May 10, 1969). Benefits for James Woolley and Patricia Woolley were awarded on April 14, 1971.

In the letter dated July 29, 1971 (Exhibit 9 -- deemed to be the request for reconsideration the claimant expanded this case to constitute application for:

(a) child's insurance benefits for James Woolley and Patricia Woolley from March 1959;

(b) child's insurance benefits for Jane (Woolley) Turgeon from March 1959 to May 1969);

(c) mother's insurance benefits for herself from March 1959 to November 1962.

Inasmuch as the initial determination allowed child's insurance benefits for James and Patricia from January 1970, in effect as to these two children the request for reconsideration contained request that the date of entitlement for each of them be changed from January 1970 to March 1959, which if approved would provide lump sum payment for benefits accrued during the period March 1959 through December 1969.

Section 202(d) of the Social Security Act provides for the payment of monthly benefits to the qualified child of an insured individual who has filed an application.

Section 202(j) of the Social Security Act and Regulations No. 4, Section 404.607 of the Social Security Administration limit the retroactivity of an application for monthly benefits to twelve months before the month of filing.

Section 404.608 of Regulations No. 4 provides that an application is considered to be filed as of the date it is received by the Social Security Administration.



Section 404.613 of the Regulations provides that if an individual files a written statement with the Social Security Administration which indicates an intention to claim benefits and such statements bears his signature, the filing of such statement shall be considered to be the filing of an application for such benefits.

The purpose of that Section 404.613 is to provide a flexibility in giving effect to the congressional intent that persons having a **bona fide** claim shall not be denied that claim merely because of a failure to satisfy the technicalities irrespective of how necessary for the orderly processing of the great mass of paper work involved in the administration of the Social Security Act. In formulating Section 404.613, as a practical matter it was recognized that only a written expression or indication of intent to claim Social Security Benefits should be accepted as being an application for such benefits because oral statements and responses thereto tend to be ambiguous and subject to gross misunderstanding even though everyone involved is acting in great good faith. Thus, the purpose of requiring that the statement be in writing is that a reasonable degree of certainty as to facts be established before determinations are made pursuant to which substantial payments will be made out of the Social Security trust funds.

On the total hearing record the Administrative Law Judge finds that if within one year following the death of Clayton Woolley application had been filed covering these parties, the full range of benefits here requested would have been allowed and paid starting on (effective date) March 31, 1959.

The claimant now requests, in effect, that the inquiry made by the attorney for her late husband's estate (then acting for her and the children) be treated as being an application filed within the meaning of the Social Security Act as of the date of the said inquiry which was made within one year after the date of death by Clayton Woolley.

By letter dated January 3, 1974 (Exhibit 21) Bernard F. Grabowski, Esquire, stated:

> "I represented her interest in the Estate of Clayton E. Woolley and her brother-in-law, Francis J. Englert, served as Administrator of said Estate.
>
> "Upon completing her hearing for Workmen's Compensation and other benefits under Section 5-144 of the Connecticut General Statutes, she made inquiry of me as to whether or not she and her children were entitled to Social Security benefits. I checked into the matter and phoned the Social Security office in New Britian, Connecticut. I made inquiry at the office as to whether or not under the fact situation involved she and her children would be entitled to benefits. I was advised that by reason of Workmen's Compensation benefits being available to her and her children, neither she nor her children were entitled to Social Security benefits. "I so informed her. She took no further action on this matter."

On the record now before the Administrative Law Judge, he is persuaded and hence hereby finds for purposes of this proceeding that former Congressman Grabowski did (promptly after completing the hearing under Section 5-144 of the Connecticut Statutes) make --

> "inquiry at the (New Britain Social Security) office as to whether or not under the fact situation involved she and her children would be entitled to benefits,"

and the Administrative Law Judge also hereby finds that Congressman Grabowski was advised by an employee in that Social Security office acting in the scope of his or her employment that --

> "by reason of Workmen's Compensation benefits being available to her and her children, neither she nor her children were entitled to Social Security Benefits."

The date of that inquiry is not clear, but for present purposes is fixed as being the date of completion of the



mentioned hearing (proceeding) under said Section 5-144, which date was on (or about) July 31, 1959.

Thus, for purposes of this proceeding, it is established that the inquiry was in fact made by Congressman Grabowski acting as attorney for the claimant and the children here involved, at a determinable date, and that by error or mistake of an employee of the Social Security Administration, the attorney was advised that neither the claimant nor the children were entitled to receive Social Security benefits, and, but for this error or mistake, a formal application would have been filed immediately and based thereon as of March 31, 1959, the claimant and each of the three children would have been awarded Social Security benefits under the account of Clayton Woolley 048-20-6929. In short the widow (claimant) was entitled to receive mother's insurance benefits and each of the three children were entitled to receive child's insurance benefits, starting on (effective date) and would have but for the mentioned error or mistake by an employee in the Social Security District Office involved.

It is believed by the Administrative Law Judge, and therefore found, that if the inquiry made by former Congressman Grabowski had been made in writing it would have been deemed to be a statement of intent to file application for whatever mother's insurance benefits the claimant might be entitled to receive and for whatever child's insurance benefits each or any of the three children might be entitled to receive; therefore if that inquiry by Congressman Grabowski had been in writing it would have been considered for all purposes as Constituting an application for those benefits. The Administrative Law Judge believes, and therefore finds, that in the hearing record of this case there is a substantial degree of certainty that Congressman Grabowski did in fact make the stated inquiry on (or about July 31, 1959), that it was not ambiguous, that said inquiry in fact constituted a statement of intent to claim all social security benefits which might be due to the claimant and to each of the three children, and that said

statement of intent (although long allowed to remain dormant because of the mistake or error by a Social Security employee) was revived as soon as the claimant had reason to believe such an error may have been made.

The purpose of Section 404.613 in requiring such statements intention to be in writing having been fully satisfied in this case that requirement is hereby waived.

Accordingly, the Administrative Law Judge finds that the inquiry made by Congressman Grabowski constituted a statement of intent within the meaning of Section 404.613, and by construction constituted an application for mother's insurance benefits for the claimant and child's insurance benefits for each of the three children, all as of March 31, 1959. The Administrative Law Judge further finds that these applications should be and hereby are allowed in full with an effective date for each as of March 31, 1959. The Administrative Law Judge further finds that the claimant individually was entitled to receive mother's insurance benefits for the period March 31, 1959 to November 1962; that the daughter, Jane (Woolley) Turgeon, was entitled to receive child's insurance benefits from March 31, 1959 to May 1969; and James Woolley and Patricia each were entitled to receive child's insurance benefits from March 31, 1959.

It is the decision of the Administrative Law Judge that the applications for mother's insurance benefits and for child's insurance benefits, as above specified and discussed, are each allowed with an effective date of March 31, 1959.

Thomas E. Bennett
Administrative Law Judge

March 11, 1974



## APPENDIX E

## LETTER OF ATTORNEY GRABOWSKI DATED JANUARY 3, 1974.

**HANRAHAN, GRABOWSKI & HAYES**

**Attorneys at Law**

**583 Farmington Avenue**

**Bristol, Connecticut 06010**

January 3, 1974

Honorable Thomas Bennett
Administrative Law Judge
Department of Health, Education and Welfare
Social Security Administration
U.S. Government
Washington, D.C.

Dear Judge Bennett:

Re: Nellie P. (Woolley) Goff

I have been informed that Nellie P. Goff has filed an appeal regarding Sociel Security benefits for herself and her minor children which has been heard by yourself or will be heard by you in the very near future.

This letter is to verify that Nellie P. Goff was married to Clayton E. Woolley and that they had three minor children at the time of his death. Clayton E. Woolley met an untimely death in the course of his employment with the State of Connecticut Highway Department. At the time of his death they had three minor children:

Jane Nellie Woolley, born on June 1, 1949;
James Clayton Woolley, born on February 3, 1953; and
Patricia Irene Woolley, born on September 19, 1955.

At the time of Clayton E. Woolley's death, his wife, Nellie, was not employed and all three children were below the age of eighteen years.

I represented her interest in the Estate of Clayton E. Woolley and her brother-in-law, Francis J. Englert, served as Administrator of said Estate.

Upon completing her hearing for Workmen's Compensation and other benefits under Section 5-144 of the Connecticut General Statutes, she made inquiry of me as to whether or not she and her children were entitled to Social Security benefits. I checked into the matter and phoned the Social Security office in New Britian, Connecticut. I made inquiry at the office as to whether or not under the fact situation involved she and her children would be entitled to benefits. I was advised that by reason of Workmen's Compensation benefits being available to her and her children, she nor her children were entitled to Social Security benefits.

I so informed her. She took no further action on this matter.

In January of 1971, she heard a radio or a television broadcast which stated that benefits might be available to a person in her situation.

In the interim she married Joseph Goff in November, 1962. Her oldest child reached majority before January, 1971. This oldest child married in 1969. The broadcast she heard coupled with the birthday of her son in February, 1971, causing her to inquire of the Social Security Department in New Britian. She was advised by Mrs. Was that she was entitled to benefits and could have been receiving benefits from 1959. Having acquired this information she returned to



my office and so advised me. I informed her that I had made inquiry upon the completion of our Workmen's Compensation matter of the Social Security office and was informed that no benefits were available to her.

She informed me that she would make a request for Social Security benefits in the very near future which she has done.

I write this letter to make the facts available to you, your Honor, so that you can decide the matter on its merits; if indeed she is entitled to Social Security benefits for contributions made by her husband the cause of justice would be served in her and her children receiving retroactive benefits.

If you have any further questions of me, your Honor, I would be too glad to answer them.

Very truly yours,

Bernard F. Grabowski

## APPENDIX F

## AFFIDAVIT OF ATTORNEY GRABOWSKI DATED APRIL 10, 1974

### AFFIDAVIT

STATE OF CONNECTICUT )
) ss. Bristol
COUNTY OF HARTFORD, )

Personally appeared BERNARD F. GRABOWSKI, an attorney authorized to practice law in the State of Connecticut who, upon being duly sworn, desposes and says:

(1) That be believes in the obligation of an oath;

(2) That he is over the age of 18 years;

(3) That he represented the interests of Nellie P. Goff, widow of Clayton E. Woolley, individually and as mother of three minor children, after the death of Clayton E. Woolley, who died on March 31, 1959;

(4) That in the course of said representation, he appeared before the Workmen's Compensation Commission of Connecticut, and represented in proceedings under Sec. 5-144 of the Connecticut General Statutes;

(5) That upon completion of the hereinbefore mentioned proceedings, he was consulted by Mrs. Goff relative to her eligibility, individually and for her minor children, under the Social Security Act;

(6) That pursuant to said inquiry, he inquired into the matter and telephoned the Social Security Office in New Britian, Connecticut;

(7) That he was advised by an employee of the New Britian Social Security Office that, pursuant to the Workmen's Compensation Commission benefits being available to Mrs. Goff and her minor children, neither she nor her children were entitled to Social Security benefits;

(8) That the specific date of his inquiry at the Social Security Office in New Britain is uncertain but that it is certain that it was in the month of July, 1959.

Bernard F. Grabowski

Subscribed and sworn to before me this 10th day of April, 1974

James E. Hayes
Commissioner of Superior Court



## APPENDIX G

## STATUTES AND REGULATIONS INVOLVED

### 5 USC 556 [c] [8]

(c) Subject to published rules of the agency and within its powers, employees presiding at hearings may --

(1) administer oaths and affirmations;

(2) issue subpoenas authorized by law;

(3) rule on offers of proof and receive relevant evidence;

(4) take depositions or have depositions taken when the ends of justice would be served;

(5) regulate the course of the hearing;

(6) hold conferences for the settlement or simplification of the issues by consent of the parties;

(7) dispose of procedural requests or similar matters;

(8) make or recommend decisions in accordance with section 557 of this title; and

[d] **Child's insurance benefits.** (1) Every child (as defined in section 216(e) [42 USCS § 416(e)]) of an individual entitled to old-age disability insurance benfits, or of an individual who dies a fully or currently insured individual, if such child --

(A) has filed application for child's insurance benefits,

(B) at the time such application was filed was unmarried and (i) either had not attained the age of 18 or was a full-time student and had not attained the age of 22, or (ii) is under a disability (as defined in section 223(d) [42 USCS § 423(d)]) which began before he attained the age of 22 and

(C) was dependent upon such individual --
(i) if such individual is living, at the time such application was filed,
(ii) if such individual has died, at the time of such death, or
(iii) if such individual had a period of disability which continued until he became entitled to old-age or disability insurance benefits, or (if he has died) until the month of his death, at the beginning of such period of disability or at the time he became entitled to such benefits,

shall be entitled to a child's insurance benefit for each month, beginning with the first month after August 1950 in which such child becomes so entitled to such insurance benefits and ending with the month preceding whichever of the following occurs --

(D) the month in which such child dies, or marries,

(E) the month in which such child attains the age of 18, but only if he (i) is not under a disability (as so defined) at the time he attains such age, and (ii) is not a full-time student during any part of such month,

(F) if such child was not under a disability (as so defined at the time he attained the age of 18, the earlier of --



(i) the first month during no part of which he is a full-time student, or

(ii) the month in which he attains the age of 22,

but only if he was not under a disability (as so defined) in such earlier month, or

(G) if such child was under a disability (as so defined) at time he attained the age of 18, if he was not under a disability (as so defined) at such time but was under a disability (as so defined) at or prior to the time he attained (or would attain) the age of 22, the third month following thte month in which he ceases to be under such disability or (if later) the earlier of --

(i) the first month during no part of which he is a full-time student, or

(ii) the month in which he attains the age of 22,

but only if he was not under a disability (as so defined) in such earlier month.

Entitlement of any child to benefits under this subsection on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits shall also end with the month before the first month for which such individual is not entitled to such benefits unless such individual is, for such later month, entitled to old-age insurance benefits or unless he dies in such month. No payment under this paragraph may be made to a child who would not meet the definition of disability in section 223(d) [42 USCS § 423(d)] except for paragraph (1)(b) thereof for any month in which he engages in substantial gainful activity.

(2) Such child's insurance benefit for each month shall, if the individual on the basis of whose wages and self-employment income the child is entitled to such benefit has not died prior to the end of such month, be equal to one-half of the primary insurance amount of such individual for such month. Such child's insurance benefit for each month shall, if such individual has died in or prior to such month, be equal to three-fourths of the primary insurance amount of such individual.

(3) A child shall be deemed dependent upon his father or adopting father or his mother or adopting mother at the time specified in paragraph (1)(c) unless, at such time, such individual was not living with or contributing to the support of such child and --

(A) such child is neither the legitimate nor adopted child of such individual, or
(B) such child had been adopted by some other individual.

For purposes of this paragraph, a child deemed to be a child of a fully or currently insured individual pursuant to section 216(h)(2)(B) or section 216(h)(3) [42 USCS § 416(h)(2)(B), (3)] shall be deemed to be the legitimate child of such individual.

(4) A child shall be deemed dependent upon his stepfather or stepmother at the time specified in paragraph (1) (C) if, at such time, the child was living with or receiving at least one-half of his support from such stepfather or stepmother.

(5) In the case of a child who has attained the age of eighteen and who marries --

(A) an individual entitled to benefits under subsection (a), (b), (e), (f), (g), or (h) of this section or under section 223(a) [42 USCS § 423(a)], or
(B) another individual who has attained the age of eighteen and is entitled to benefits under this subsection.

Such child's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) but subject to subsection (s), not be terminated by reason of such marriage; except that, in the case of such a marriage to a male individual entitled to benefits under section 223(a) [ 42 USCS § 423(a) ] or this subsection, the preceding provisions of this paragraph shall not apply with respect to benefits for months after the last month for which such individual is entitled to such benefits under section 223(a) [42 USCS § 423(a)] or this subsection unless (i) he ceases to be so entitled by reason of his death, or (ii) in the case of an individual who



was entitled to benefits under section 223(a) [42 USCS § 423(a)], he is entitled, for the month following such last month, to benefits under subsection (a) of this section.

(6) A child whose entitlement to child's insurance benefits on the basis of the wages and self-employment income of an insured individual terminated with the month preceding the month in which such child attained the age of 18, or with a subsequent month, may again become entitled to such benefits (provided no event specified in paragraph (1) (D) has occured) beginning with the first month thereafter in which he --

(A) (i) is a full-time student or is under a disability (as defined in section 223(d), and (ii) had not attained the age of 22, or
(B) is under a disability (as so defined) which began before the close of the 84th month following the month in which his most recent entitlement to child's insurance benefits terminated because he ceased to be under such disability,

but only if he has filed application for such reentitlement. Such reentitlement shall end with the month preceding whichever of the following first occurs:

(C) the first month in which an event specified in paragraph (1) (D) occurs:
(D) the earlier of (i) the first month during no part of which he is a full-time student or (ii) the month in which he attains the age of 22, but only if he is not under a disability (as so defined) in such earlier month; or
(E) if he was under a disability (as so defined), the third month following the month in which he ceases to be under disability or (if later) the earlier of --

(i) the first month during no part of which he is a fulltime student, or
(ii) the month in which he attains the age of 22.

(7) For the purposes of this subsection --

(A) A "full-time student" is an individual who is in full-time attendance as a student at an educational institution, as determined by the Secretary (in accordance with regulations prescribed by him) in the light of the standards and practices of the institution involved, except that no individual shall be considered a "full-time student" if he is paid by his employer while attending an educational institution at the request, or pursuant to a requirement, of his employer.

(B) Exept to the extent provided in such regulations, an individual shall be deemed to be a full-time student during any period of nonattendance at an educational institution at which he has been in full-time attendance if (i) such period is 4 calendar months or less, and (ii) he shows to the satisfaction of the Secretary that he intends to continue to be in full-time attendance at an educational institution immediately following such period. An individual who does not meet the requirement of clause (ii) with respect to such period of nonattendance shall be deemed to have met such requirement (as of the beginning of such period) if he is in full-time attendance at an educational institution immediately following such period.

(C) An "educational institution" is (i) a school or college or university operated or directly supported by the United States, or by any State or local government or political subdivision thereof, or (ii) a school or college or university which has been approved by a State or accredited by a State-recognized or nationally-recognized accrediting agency or body, or (iii) a nonaccredited school or college or university whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited.

(D) A child who attains age 22 at a time when he is a full-time student (as defined in subparagraph (A) of this paragraph and without application of subparagraph (B) of such paragraph) but has not (at such time) completed the requirements for, or received, a degree from a four-year college or university shall be deemed (for purposes of determining whether his entitlement to benefits under this



subsection has terminated under paragraph (1)(F) and for purposes of determining his initial entitlement to such benefits under clause (i) of paragraph (1)(B)) not to have attained such age until the first day of the first month following the end of the quarter or semester in which he is enrolled at such time (or, if the educational institution (as defined in this paragraph) in which he is enrolled is not operated on a quarter or semester system, until the first day of the first month following the completion of the course in which he is so enrolled or until the first day of the third month beginning after such time, whichever first occurs).

(8) In the case of --

(A) An individual entitled to old-age insurance benefits (other than an individual referred to in subparagraph (B)), or

(B) an individual entitled to disability insurance benefits, or an individual entitled to old-age insurance benefits who was entitled to disability insurance benefits for the month preceding the first month for which he was entitled to old-age insurance benefits,

a child of such individual adopted after such individual became entitled to such old-age or disability insurance benefits shall be deemed not to meet the requirements of clause (i) or (iii) of paragraph (1)(C) unless such child --

(C) is the natural child or stepchild of such individual (including such a child who was legally adopted by such individual) or

(D) (i) was legally adopted by such individual in an adoption decreed by a court of competent jurisdiction within the United States,

(ii) was living with such individual in the United States and receiving at least one-half of his support from such individual (I) if he is an individual referred to in subparagraph (A), for the year immediately before the month in which such individual became entitled to old-age

insurance benefits, or if such individual had a period of disability which continued until he had become entitled to old-age insurance benefits, the month in which such period of disability began, or (II) if he is an individual referred to in subparagraph (B), for the year immediately before the month in which began the period of disability of such individual which still exists at the time of adoption (or, if such child was adopted by such individual after such individual attained age 65, the period of disability of such individual which existed in the month preceding the month in which he attained age 65), or the month in which such individual became entitled to disability insurance benefits, and (iii) had not attained the age of 18 before he began living with such individual.

In the case of a child who was born in the one-year period during which such child must have been living with and receiving at least one-half of his support from such individual, such child shall be deemed to meet such requirements for such period if, as of the close of such period, such child has lived with such individual in the United States and received at least one-half of his support from such individual for substantially all of the period which begins on the date of birth of such child

(9)(A) A child who is a child of an individual under clause (3) of the first sentence of section 216(e) [42 USCS § 416(e)] and is not a child of such individual under clause (1) or (2) of such first sentence shall be deemed not to be dependent on such individual at the time specified in subparagraph (1)(C) of this subsection unless (i) such child was living such individual in the United States and receiving at least one-half of his support from such individual (I) for the year immediately before the month in which such individual became entitled to old-age insurance benefits or disability insurance benefits or died, or (II) if such individual had a period of disability which continued until he had become entitled to old-age insurance benefits, or disability insurance benefits, or died, for the year immediately before the month in which such period of disability began,



and (ii) the period during which such child was living with such individual began before the child attained age 18.
(B) In the case of a child who was born in the one-year period during which such child must have been living with and receiving at least one-half of his support from such individual, such child shall be deemed to meet such requirements for such period if, as of the close of such period, such child has lived with such individual in the United States and received at least one-half of his support from such individual for substantially all of the period which begins on the date of such child's birth.

**[g] Mother's insurance benefits.** (1) The widow and every surviving divorced mother (as defined in section 216(d) [42 USCS § 416(d)]) of an individual who died a fully or currently insured individual, if such widow or surviving divorced mother --

(A) is not married,
(B) is not entitled to a widow's insurance benefit,
(C) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than three-fourths of the primary insurance amount of such individual,
(D) has filed application for mother's insurance benefits, or was entitled to wife's insurance benefits on the basis of the wages and self-employment income of such individual for the month preceding the month in which he died,
(E) at the time of filing such application has in her care a child of such individual entitled to a child's insurance benefit, and
(F) in the case of a surviving divorced mother --
(i) the child referred to in subparagraph (E) is her son, daughter, or legally adopted child, and
(ii) the benefits referred to in such subparagraphs are payable on the basis of such individual's wages and self-employment income,

shall (subject to subsection (s)) be entitled to a mother's insurance benefit for each month, beginning with the first

month after August 1950 in which she becomes so entitled to such insurance benefits and ending with the month preceding the first month in which any of the following occurs: no child of such deceased individual is entitled to a child's insurance benefit, such widow or surviving divorced mother becomes entitled to an old-age insurance benefit equal to or exceeding three-fourths of the primary insurance amount of such deceased individual, she becomes entitled to a widow's insurance benefit, she remarries, or she dies. Entitlement to such benefits shall also end, in the case of a surviving divorced mother, with the month immediately preceding the first month in which no son, daughter, or legally adopted child of such surviving divorced mother is entitled to a child's insurance benefit on the basis of the wages and selfemployment income of such deceased individual.

(2) Such mother's insurance benefit for each month shall be equal to three-fourths of the primary insurance amount of such deceased individual.

(3) In the case of a widow or surviving divorced mother who marries --

(A) an individual entitled to benefits under subsection (a), (f), or (h), or under section 223(a) [42 USCS § 423(a)], or
(B) an individual who has attained the age of eighteen and is entitled to benefits under subsection (d),

the entitlement of such widow or surviving divorced mother to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) but subject to subsection (s), not be terminated by reason of such marriage; except that, in the case of such a marriage to an individual entitled to benefits under section 223(a) [42 USCS § 423(a)] or subsection (d) of this section, the preceding provisions of this paragraph shall not apply with respect to benefits for months after the last month for which such individual is entitled to such benefits under section 223(a) [42 USCS § 423(a)] or subsection (d) of this section unless (i) he ceases to be so entitled by reason of his death, or (ii) in the case of an individual who was entitled to benefits under section 223(a)



[42 USCS § 423(a)], he is entitled, for the month following such last month, to benefits under subsection (a) of this section.

[i] **Lump-sum death payments.** Upon the death, after August 1950, of an individual who died a fully or currently insured individual, an amount equal to three times such individual's primary insurance amount, or an amount equal to $255, whichever is the smaller, shall be paid in a lump sum to the person, if any, determined by the Secretary to be the widow or widower of the deceased and to have been living in the same household with the deceased at the time of death. If there is no such person, or if such person dies before receiving payment, then such amount shall be paid --

(1) if all or part of the burial expenses of such insured individual which are incurred by or through a funeral home or funeral homes remains unpaid, to such funeral home or funeral homes to the extent of such unpaid expenses, but only if (A) any person who assumed the responsibility for the payment of all or any part of such burial expenses files an application, prior to the expiration of two years after the date of death of such insured individual, requesting that such payment be made to such funeral home or funeral homes, or (B) at least 90 days have elapsed after the date of death of such insured individual and prior to the expiration of such 90 days no person has assumed responsibility for the payment of any of such burial expenses;
(2) if all of the burial expenses of such insured individual which were incurred by or through a funeral home or funeral homes have been paid (including payments made under clause (1) to any person or persons, equitably entitled thereto, to the extent and in the proportions that he or they shall have paid such burial expenses;

(3) if the body of such insured individual is not available for burial but expenses were incurred with respect to such individual in connection with a memorial service, a memorial marker, a site for the marker, or any other item

of a kind for which expenses are customarily incurred in connection with a death and such expenses have been paid, to any person or persons, equitably entitled thereto, to the extent and in the proportions that he or they shall have paid such expenses; or

(4) if any part of the amount payable under this subsection remains after payments have been made pursuant to clauses (1), (2), and (3), to any person or persons, equitably entitled thereto, to the extent and in the proportions that he or they shall have paid other expenses in connection with the burial of such insured individual, in following order of priority: (A) expenses of opening and closing the grave of such insured individual, (B) expenses of providing the burial plot of such insured individual, and (C) any remaining expenses in connection with the burial of such insured individual.

No payment (except a payment authorized pursuant to clause (1)(A) of the preceding sentence) shall be made to any person under this subsection unless application therefor shall have been filed, by or on behalf of such person (whether or not legally competent), prior to the expiration of two years after the date of such insured individual, or unless such person was entitled to wife's or husband's insurance benefits, on the basis of the wages and self-employment income of such insured individual, for the month preceding the month in which such individual died. In the case of any individual who died outside the forty-eight States and the District of Columbia after December 1953 and before January 1, 1957, whose death occured while he was in the active military or naval service of the United States, and who is returned to any of such States, the District of Columbia, Alaska, Hawaii, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa, for interment or reinterment, the provisions of the preceding sentence shall not prevent payment to any person under the second sentence of this subsection if application for a lump-sum death payment with respect to such deceased individual is filed by or on behalf of such person (whether or not legally competent) prior to the



expiration of two years after the date of such interment or reinterment. In the case of any individual who died outside the fifty States and the District of Columbia after December 1956 while he was performing service, as a member of a uniformed service, to which the provision of section 210 (I) (1) [42 USCS 2d (I) (1) are applicable, and who is returned to any State, or to any Territory or possession of the United States, for interment or reinterment, the provisions of the third sentence of this subsection shall not prevent payment to any person under the second sentence of this subsection if application for a lump-sum death payment with respect to such deceased individual is filed by or on behalf of such person (whether or not legally competent) prior to the expiration of two years after the date of such interment or reinterment.

## EVIDENCE AND PROCEDURE FOR ESTABLISHMENT OF BENEFITS

[a] **Rules and regulations.** The Secretary shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this title, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.

(5) After the expiration of the time limitation following any year in which wages were paid or alleged to have been paid to, or self-employment income was derived or alleged to have been derived by, an individual, the Secretary may change or delete any entry with respect to wages or self-employment income in his records of such year for such individual or include in his records of such year for such individual any omitted item of wages or self-employment income but only --

(A) if an application for monthly benefits or for a lump-sum death payment was filed within the time limitation following such year; except that no such change, deletion, or inclusion may be made pursuant to this subparagraph after a final decision upon the application for monthly benefits or lump-sum death payment;

[g]. **Judicial review.** Any individual, after any final decision of the Secretary made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him or notice of such decision or within such further time as the Secretary may allow. Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides, or has his principal place of business, or, if he does not reside or have his principal place of business within any such judicial district, in the United States District Court for the



District of Columbia. As part of his answer the Secretary shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the cause for a rehearing. The findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive, and where a claim has been denied by the Secretary or a decision is rendered under subsection (b) hereof which is adverse to an individual who was a party to the hearing before the Secretary, because of failure of the claimant or such individual to submit proof in conformity with any regulation prescribed under subsection (a) hereof, the court shall review only the question of conformity with such regulations and the validity of such regulations. The court shall, on motion of the Secretary made before it files its answer, remand the case to the Secretary for further action by the Secretary, and may, at any time, on good cause shown, order additional evidence to be taken before the Secretary, and the Secretary shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm his findings of fact or his decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and a transcript of the additional record and testimony upon which his action in modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision. The judgment of the court shall be final except that it shall be subject to review in the same manner as a judgment in other civil actions. Any action instituted in accordance with this subsection shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

16g

**20 CFR 404.601 [b]**

Section 404.601 (b) of Social Security Administration Regulations No. 4 provides, in pertinent part, that the term "applicant" refers to the individual who has filed an application on his own behalf or on behalf of another for monthly benefits.

17g

**20 CFR 404.601 [c]**

Section 404.601 (c) of the regulations indicates that the term "application" refers only to an application on a form prescribed in section, 404.602 and includes an application for monthly benefits.

## 20 CFR 404.601 [d]

Section 404.601 (d) provides that an individual has not "filed an application" for purposes of section 202 of the Act until an application on a form prescribed in section 404.602 has been filed in accordance with the regulations in Subpart G.



## 20 CFR 404.601 [e]

Section 404.601 (e) of the regulations provides that the term "to execute an application" means the completion and signing of the application (or written statement, requests, or notice.)

**20 CFR 404.613**

" . . . § 404.613 of these regulations provides, that if an individual files a written statement with the Social Security Administration, which indicates an intention to claim benefits and such statement bears his signature, the filing of such statement shall be considered to be the filing of an application for such benefits. Thus the administrative purpose of the Act and its supporting regulations were specifically designed to assure, that only a written expression of intent to claim Social Security Benefits should be accepted and considered as valid application under the law . . ."

*****

"**The Social Security Act, supplemented by its regulations, was intended to eliminate or at least reduce to a minimum the possibility of fraud, confusion, and laxity in its administration.** The vastness of the program makes it essential to adhere to the written application procedure, if there is to be an orderly and controllable system of management for approving claims paying out insurance benefits." (4-5a).*

Supreme Court, U. S.
FILED
SEP 28 1976
MICHAEL RODAK, JR., CLERK

No. 76-138

# In the Supreme Court of the United States

OCTOBER TERM, 1976

NELLIE T. GOFF, PETITIONER

*v.*

F. DAVID MATHEWS, SECRETARY OF HEALTH, EDUCATION AND WELFARE

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT*

## MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

ROBERT H. BORK,
*Solicitor General,*
*Department of Justice,*
*Washington, D.C. 20530.*

# In the Supreme Court of the United States

OCTOBER TERM, 1976

---

No. 76-138

NELLIE T. GOFF, PETITIONER

*v.*

F. DAVID MATHEWS, SECRETARY OF HEALTH, EDUCATION AND WELFARE

---

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT*

---

**MEMORANDUM FOR THE RESPONDENT IN OPPOSITION**

---

Petitioner seeks review of the court of appeals' decision sustaining the refusal of the Secretary of the Department of Health, Education and Welfare to recognize a telephone call allegedly placed on her behalf in 1959 to a local Social Security office as an application for survivor's benefits under the Social Security Act.

1. Petitioner's first husband, Clayton E. Woolley, who was insured under both the Connecticut workmen's compensation statute (Conn. Gen. Stat. Ann. §5-144 (1969)) and the Social Security Act, 49 Stat. 622, as amended, 42 U.S.C. 401 *et seq.*, died on March 31, 1959, from injuries he suffered at work. Petitioner thereafter applied for and received workmen's compensation benefits.

On January 28, 1971, petitioner filed her first written application for survivor's benefits under the Social

Security Act for herself and the three children of her marriage to Woolley. On the basis of that application, the Secretary awarded surviving child's benefits to the two younger children still under 18 years of age, retroactive to January 1970.[1] However, the Secretary denied petitioner's claims for (1) accrued mother's benefits, (2) surviving child's benefits for her oldest child, and (3) additional retroactive benefits for her two younger children. The Secretary denied petitioner's claims to such additional benefits because petitioner had not applied in writing for those benefits prior to January 28, 1971 (Pet. App. 1b-2b).[2]

In support of her claims for additional benefits, petitioner had presented an affidavit prepared by the attorney who had represented her at the time of her first husband's death. Her former attorney stated in that affidavit that he had placed a telephone call in 1959 to the Social Security office in New Britain, Connecticut, and had been informed that neither petitioner nor her children were entitled to survivor's benefits under the Social Security Act because they were already receiving workmen's compensation (Pet. App. 1f-2f). Petitioner

[1]Under Section 202(j)(1) of the Social Security Act, 49 Stat. 623, as amended, 42 U.S.C. 402(j)(1), a claimant is entitled to receive survivor's benefits retroactively for a period of up to twelve months preceding the filing of an application if the claimant would have been entitled to benefits had an application been filed during such period.

[2]Petitioner remarried in 1962, and her entitlement to surviving mother's benefits ceased at that time. 42 U.S.C. 402(g). Thus, during the twelve months preceding the filing of her application, she had not been eligible to receive such benefits. Similarly, petitioner's oldest child had married in 1969, and had not been eligible during 1970 to receive surviving child's benefits. 42 U.S.C. 402(d); Pet. App. 8c.



contended, in effect, that this telephone inquiry should have been regarded by the Secretary as the equivalent of a written inquiry.[3]

After having exhausted her administrative remedies, petitioner filed the present suit in the district court pursuant to 42 U.S.C. 405(g), seeking surviving mother's benefits for herself in a lump sum retroactive from 1962 (when she remarried) to 1959, and surviving child's benefits for her children in a lump sum retroactive from 1970 to 1959 for the two younger children and from 1969 to 1959 for the oldest. The district court rejected petitioner's claims, and granted the Secretary's motion for summary judgment, holding that petitioner's "[f]ailure * * * to file a timely application [under the governing regulations] is not simply a non-essential procedural requirement, [but] is a substantial and basic requirement of the regulations" (Pet. App. 5b). The court also held that the Secretary could not be estopped from denying petitioner's claims for additional benefits even if an employee of the Social Security Administration had given her former attorney incorrect information in 1959 (*id.* at 4b),[4] and that the Administrative Law Judge's recommendation that the Secretary award additional benefits was not binding upon the Secretary (*id.* at 5b). The court of appeals summarily affirmed (*id.* at 1a).

[3]Under the applicable regulations, a written inquiry concerning eligibility for survivor's benefits is sufficient to preserve a claimant's entitlement to such benefits, provided the claimant submits a written application for benefits, in the prescribed form, within six months of receipt from the Secretary of a notice informing the claimant of the need to submit a written application. 20 C.F.R. 404.613.

[4]Petitioner apparently has abandoned in this Court the estoppel arguments she advanced in the district court. In any event, the district court properly rejected those arguments (see Pet. App. 4b-5b).

2. The decision below is correct and further review is not warranted.

The Social Security Act provides that before a person may be paid social security benefits, including survivor's benefits, an application for benefits must be filed by or on behalf of such person. *E.g.*, 42 U.S.C. 402(d)(1)(A) and 402(g)(1)(D). The Act further provides that a retroactive award of benefits may not extend beyond the twelve months preceding the date of application. 42 U.S.C. 402(j)(1). The regulations issued by the Secretary pursuant to these statutory provisions expressly provide that a claim for benefits requires the filing of a written application.[5]

These requirements represent an entirely permissible exercise of the power of Congress and of the Secretary's power, under 42 U.S.C. 405(a),[6] to make such rules and regulations as are "necessary or appropriate"

---

[5]Under the applicable regulations, "an individual has not 'filed an application' [for benefits, as required by the Social Security Act] * * * until an application on a form prescribed in [20 C.F.R.] 404.602 has been filed * * *." 20 C.F.R. 404.601(d). The term "to execute an application" is defined in 20 C.F.R. 601(e) to mean "the completion and signing of the application (or written statement, request, or notice." See also 20 C.F.R. 404.601(b) and (c).

[6]42 U.S.C. 405(a) provides as follows:

> *Rules and regulations; procedures.* The Secretary shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this title, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.



to administer the provisions of the Social Security Act providing for survivor's benefits. As the district court noted (Pet. App. 3b-4b):

> The Social Security Act, supplemented by its regulations, was intended to eliminate or at least reduce to a minimum the possibility of fraud, confusion, and laxity in its administration. The vastness of the program makes it essential to adhere to the written application procedure, if there is to be an orderly and controllable system of management for approving claims and paying out insurance benefits.

Cf. *Weinberger* v. *Salfi*, 422 U.S. 749, 784-785.

Contrary to petitioner's assertions (Pet. 5-7), the decision in this case does not conflict with the Fourth Circuit's decision in *Tuck* v. *Finch*, 430 F. 2d 1075. In *Tuck*, which concerned an application for disability benefits under Section 205(c)(5)(A) of the Social Security Act, as amended, 42 U.S.C. 405(c)(5)(A), the Court held that the claimant's oral inquiry concerning his entitlement to disability benefits tolled the applicable statute of limitations period governing the correction of work records. But as the court explained in *Tuck*, the claimant there was illiterate and "[w]hile a written application might be expected from a literate person, an illiterate often can do little other than make an oral request to the official to whom he has been referred" (430 F. 2d at 1077). Here, in contrast, the inquiry is alleged to have been made by petitioner's lawyer.

Moreover, the Secretary's records affirmatively established that the claimant in *Tuck* had made an oral inquiry concerning his entitlement to benefits (*ibid.*). Petitioner concedes (see Pet. App. 3b) that no written

record exists within the Social Security Administration to confirm that an oral inquiry was made on her behalf in 1959 concerning her own and her children's entitlement to survivor's benefits.[7]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
*Solicitor General.*

SEPTEMBER 1976.

---

[7]Petitioner also raises in her petition, without elaboration, the question whether the Administrative Law Judge's recommendation that the Secretary award additional benefits was binding upon the Secretary (Pet. 1). The district court properly rejected this contention (Pet. App. 5b), after having noted its inconsistency with the Secretary's authority to make a final administrative determination of a claimant's eligibility for survivor's benefits (42 U.S.C. 405(b)) and with the right of judicial review provided by the Act (42 U.S.C. 405(g)).

DOJ-1975-09